

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JASON BROWN,

Plaintiff,

v.

ALLSTREAM BUSINESS US, INC., an
Oregon corporation, ALLSTREAM
BUSINESS US, LLC, an Oregon limited
liability company and ELECTRIC
LIGHTWAVE, LLC, a Delaware Limited
Liability Company,

Defendants.

No.

**DEFENDANTS ALLSTREAM
BUSINESS US, INC., ALLSTREAM
BUSINESS US, LLC AND ELECTRIC
LIGHTWAVE, LLC'S NOTICE OF
REMOVAL OF CIVIL ACTION TO
FEDERAL COURT**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants Allstream
Business US, Inc. ("Allstream-Inc."), Allstream Business US, LLC ("Allstream-LLC"),
and Electric Lightwave, LLC (collectively, "Defendants")¹ submit this Notice of Removal

¹ Defendants Allstream-Inc. and Electric Lightwave, LLC have been
improperly joined as defendants in this action. Prior to the filing of Plaintiff's lawsuit,
Allstream-Inc. was converted into Allstream-LLC, and is now defunct. Further, Plaintiff
was never employed by Electric Lightwave, LLC and that entity has no connection to this
lawsuit. In an abundance of caution, Defendants Allstream-Inc. and Electric Lightwave,
LLC join Defendant Allstream-LLC in removing this case to federal court. However,
pursuant to FRCP 21, Defendants Allstream-Inc. and Electric Lightwave, LLC intend to
file a subsequent motion to dismiss as improperly joined defendants.

DEFENDANTS ALLSTREAM BUSINESS US, INC.,
ALLSTREAM BUSINESS US, LLC AND ELECTRIC
LIGHTWAVE, LLC'S NOTICE OF REMOVAL OF
CIVIL ACTION TO FEDERAL COURT - 1
Case No.

BULLARD LAW
A Professional Corporation
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and state:

Standard

1. “[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. §1441(a).

2. To remove a case from state court to federal court, a defendant merely needs to file a notice of removal “containing a short and plain statement of the grounds for removal.” 28 U.S.C. §1446(a); *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551, 190 L. Ed. 2d 495 (2014).

3. Pursuant to 28 U.S.C. § 1446(b)(1), a notice of removal shall be filed within 30 days after service on defendant of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.

Procedural History

4. On September 14, 2018, Plaintiff commenced this action against Defendants in the Superior Court of the State of Washington for King County (“King County Superior Court”), entitled *JASON BROWN v. ALLSTREAM BUSINESS US, INC., an Oregon corporation, ALLSTREAM BUSINESS US, LLC, an Oregon limited liability company and ELECTRIC LIGHTWAVE, LLC, a Delaware limited liability company*, Case No. 18-2-23052-7 KNT (the “Lawsuit”).²

5. In his Complaint, Plaintiff asserts two causes of action under the Washington Law Against Discrimination, RCW Chapter 49.60: (i) disability discrimination and (ii) whistleblower retaliation. Crowhurst Decl. ¶ 3, Ex. A, Compl.

² Pursuant to LCR 101(b) true and correct copies of the relevant pleadings filed in King County Superior Court are attached to the Declaration of Megan J. Crowhurst in Support of Removal (“Crowhurst Decl.”).

¶¶43–46.

6. On October 8, 2018, Defendants accepted service of process and were thereby served with the Summons and Complaint. Crowhurst Decl. ¶ 3, Ex. B. Accordingly, this Notice of Removal is timely filed within 30 days after Defendants accepted service of the Summons and Complaint.

7. On October 29, 2018, Defendants Allstream-LLC and Electric Lightwave, LLC filed a Motion for Extension of Time to File Responsive Pleading, which the King County Superior Court granted on October 31, 2018. Crowhurst Decl. ¶ 3, Ex. C & D. A responsive pleading is now due on November 12, 2018. Crowhurst Decl. ¶ 3, Ex. D. No other proceedings have taken place in King County Superior Court.

Diversity Jurisdiction

8. “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.” 28 U.S.C. §1332(a).

Citizenship

9. Plaintiff alleges in his Complaint that he “resides in Maple Valley, King County, Washington.” Crowhurst Decl. ¶ 3, Ex. A, Compl. ¶ 1. Thus, pursuant to 28 U.S.C. § 1332(c)(2), the Plaintiff in this action is a citizen of Washington.

10. Defendant Allstream-Inc. was previously an Oregon corporation.³ Declaration of Douglas Denney in Support of Defendants’ Removal of Civil Action to Federal Court (“Denney Decl.”) ¶ 3. On February 2, 2018, Allstream-Inc. filed Articles of Conversion with the Oregon Secretary of State, converting AllStream-Inc. from a corporation to a limited liability company. Denney Decl. ¶ 3, Ex. A. The name of the

³ Allstream-Inc. is no longer in operations, and so it has no principal place of business for diversity purposes. *3123 SMB LLC v. Horn*, 880 F.3d 461, 467 (9th Cir. 2018).

1 business entity after conversion was Allstream-LLC. Denney Decl. ¶ 3, Ex. A.

2 11. Defendant Allstream-LLC is a limited liability company. Denney
3 Decl. ¶ 4. A court assessing diversity jurisdiction in a matter involving a limited liability
4 company “must consider the citizenship of all members of the limited liability
5 company.” *Varney v. Air & Liquid Systems Corp.*, No. C17-1902JLR, 2018 WL 656028,
6 at *1 (W.D. Wash. Feb. 1, 2018) (citing *Johnson v. Columbia Props. Anchorage, LP*, 437
7 F.3d 894, 899 (9th Cir. 2006)). The state of organization and principal place of business
8 of a limited liability company are irrelevant for this determination. *Id.* at *2 (the
9 citizenship of an LLC is “not defined by its principal place of business, and thus the
10 location of its nerve center is not at issue for purposes of establishing diversity
11 jurisdiction”) (citation omitted).

12 12. Defendant Allstream-LLC consists of a single member, Zayo Group,
13 LLC, a Delaware limited liability company. Denney Decl. at ¶ 5, Ex. B. Zayo Group, LLC
14 consists of a single owner, Zayo Group Holdings, Inc., a Delaware corporation with its
15 principal place of business in Boulder, Colorado. Denney Decl. at ¶ 6, Ex. C.

16 13. Defendant Electric Lightwave, LLC is a Delaware limited liability
17 company. Denney Decl. ¶ 7. It consists of a single member, Allstream-LLC, an Oregon
18 limited liability company. Denney Decl. ¶ 7, Ex. D. The ownership of Allstream-LLC is as
19 set forth in paragraph 12 above.

20 14. Therefore, at the time this action commenced, there was complete
21 diversity of citizenship, because Plaintiff is a citizen of the state of Washington, and
22 Defendants and/or their members are citizens of Oregon, Colorado, and Delaware.

23 ***Amount in Controversy***

24 15. Plaintiff’s Complaint does not set forth a specific dollar amount in
25 his prayer for relief. When a complaint does not state the amount in controversy, the
26 defendant’s notice of removal may do so. LCR 101(a); *Dart Cherokee Basin*, 135 S. Ct. at

551. At this stage, the notice of removal need only include a “plausible allegation that the amount in controversy exceeds the jurisdictional amount.” *Id.* at 554. The amount in controversy may include damages (compensatory, punitive, or otherwise) and attorneys’ fees, and is the amount at stake in the underlying litigation and not a prospective assessment of the defendant’s liability. *Chavez v. JP Morgan Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018).

16. Plaintiff is seeking “actual and compensatory economic and non-economic, special and general damages, and attorneys’ fees and costs, as permitted by RCW Chapter 49.60.” Crowhurst Decl. ¶ 3, Ex. A, Compl. ¶ 44. In his Relief Requested, Plaintiff asks for “all past and future economic and noneconomic damages including past and future wage loss,” attorneys’ fees, costs, and prejudgment interest. Crowhurst Decl. ¶ 3, Ex. A at 6, Relief Requested. Where a plaintiff seeks future wages, those damages are “at stake in the litigation whatever the likelihood that she will actually recover them.” *Chavez*, 888 F.3d at 417 (citations omitted).

17. Plaintiff alleges that he was terminated in September 2015. Crowhurst Decl. Ex. A, Compl. ¶ 37. In 2014, Plaintiff earned \$75,555.08 in salary and \$35,697.06 in commissions, which totaled \$111,252.14. Denney Decl. ¶ 8. At the time of his termination in September 2015, Plaintiff had earned \$59,397.68 in salary and \$31,322.88 in commissions, which totaled \$90,720.56. Denney Decl. ¶ 8. During communications between counsel, Plaintiff’s attorney indicated that Plaintiff is seeking at least two years in back wages, Crowhurst Decl. ¶ 4, as well as his prayer for future wages. Crowhurst Decl. Ex. ¶ 3, A at 6, Relief Requested. In addition, Plaintiff has specifically made a prayer for attorneys’ fees. Crowhurst Decl. ¶ 3, Ex. A, Compl. ¶ 44 and Relief Requested.

18. Accordingly, Defendants have a good faith and reasonable belief that the amount in controversy in this action exceeds \$75,000, exclusive of interest and

costs.

Intradistrict Assignment

19. In accordance with LCR 101(e) and LCR 3(d), this action should be assigned to the United States District Court for the Western District of Washington, Seattle Division, because Plaintiff alleges that his claims arose in King County, and he initiated his lawsuit in King County. See 28 U.S.C. § 1441(a).

20. Promptly after filing this Notice of Removal, Defendants will serve a copy upon Plaintiff and will file a copy with the Clerk of the King County Superior Court, Washington, in accordance with 28 U.S.C. § 1446(d). Crowhurst Decl. ¶ 5.

WHEREFORE, Defendants pray that the Lawsuit be removed from the Superior Court of the State of Washington in and for the County of King to the United States District Court for the Western District of Washington, Seattle Division, in its entirety.

Dated this 6th day of November, 2018.

BULLARD LAW

By s/Megan J. Crowhurst

David J. Riewald, OSB No. 880969
Megan J. Crowhurst, OSB No. 132311
Naomi D. Johnson, OSB No. 150477
Attorneys for Defendants ALLSTREAM
BUSINESS US, INC., ALLSTREAM BUSINESS
US, LLC, and ELECTRIC LIGHTWAVE, LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2018 I served the foregoing
**DEFENDANTS ALLSTREAM BUSINESS US, INC., ALLSTREAM BUSINESS
US, LLC AND ELECTRIC LIGHTWAVE, LLC'S NOTICE OF REMOVAL OF
CIVIL ACTION TO FEDERAL COURT** on:

Frederick J. Newman, IV
Pendragon Law Group, LLC
1001 4th Avenue, Suite 3200
Seattle, WA 98154
fjnewman@pendragonlaw.com

- ☒ by **electronic** means through the Court's Case Management/Electronic Case File system, which will send automatic notification of filing to each person listed above.
- ☐ by **mailing** a true and correct copy to the last known address of each person listed. It was contained in a sealed envelope, with postage paid, addressed as stated above, and deposited with the U.S. Postal Service in Portland, Oregon.
- ☐ by causing a true and correct copy to be **hand-delivered** to the last known address of each person listed. It was contained in a sealed envelope and addressed as stated above.
- ☐ by causing a true and correct copy to be delivered **via overnight courier** to the last known address of each person listed. It was contained in a sealed envelope, with courier fees paid, and addressed as stated above.
- ☐ by **faxing** a true and correct copy to the last known facsimile number of each person listed, with confirmation of delivery. It was addressed as stated above.
- ☐ by **emailing** a true and correct copy to the last known email address of each person listed, with confirmation of delivery.

s/Megan J. Crowhurst
David J. Riewald, OSB No. 880969
Megan J. Crowhurst, OSB No. 132311
Naomi D. Johnson, OSB No. 150477
Attorney for Defendants ALLSTREAM BUSINESS US,
LLC and ELECTRIC LIGHTWAVE, LLC

CERTIFICATE OF SERVICE- 1
Case No.

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